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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,663	12/13/2005	Paul Ippolito De'Padova	2308/590	2307
<div>7590 Gunmar G Leinberg Nixon Peabody Clinton Square P O Box 31051 Rochester, NY 14603-1051</div>			<div>EXAMINER</div> <div>NGO, LIEN M</div>	
			<div>ART UNIT</div> <div>3754</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>08/27/2009</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,663	Applicant(s) DE'PADOVA ET AL.	
	Examiner LIEN TM NGO	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 is/are allowed.
- 6) ☒ Claim(s) 5-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/22/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawing filed 5/22/09 have been disapproved because they introduce new matter into the drawing. 37 CFR 1.121 (a) (6) states that no amendment may introduce new matter in to disclosure of an application. The original disclosure does not support the showing of the dispensing apparatus of figs. 11 and 12.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container formed in a flexible material (claim 9) and a pump system (claim 10) using with dispensing apparatus as claimed in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The amendment filed 5/22/09 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the description of the new figs. 11 and 12..

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

4. Claims 7 and 8 are objected to because of the following informalities: the fluid conduit in claims 7 and 8 lack antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 5, 6 and 8-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubois et al. (6,497,346). Dubois et al. disclose, in figs. 109, a dispensing apparatus or an actuator cap comprising a tubular outlet 10 formed in an elastomeric material

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including a fluid conduit 4, and a more rigid material casing 1 moulded about the tubular outlet so as to hold the tubular outlet in non-dispensing configuration. The dispensing apparatus is capable of using with a flexible container or a pumping system or a pressurized container (see col. 2, lines 12-16 and 17-28).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-8 and 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurokawa et al. (5,868,278) in view of Dubois et al..

Kurokawa et al. disclose, in figs. 30-32, a dispensing apparatus or an actuator cap comprising a tubular tube 56 forming a tubular outlet, which is a thermoplastic elastomer; and a casing 15, which is more rigid material.

Kurokawa et al. does not disclose the casing being moulded about the tubular outlet.

Dubois et al. teach a dispensing apparatus comprising a rigid casing being moulded about a flexible tubular outlet.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the dispensing apparatus of Kurokawa et al. with the casing being moulded about the tubular outlet, in view teaching of Dubois et al., to hold the tubular outlet in non-dispensing configuration.

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9. Claims 5-8 and 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Bon (3,991,916) in view of Dubois et al..

Del bon discloses, in figs. 4 and 5, a dispensing apparatus or an actuator cap comprising a tubular tube 56 forming a tubular outlet, which is a thermoplastic elastomer; and a casing15, which is more rigid material.

Del Bon does not disclose the casing being moulded about the tubular outlet.

Dubois et al. teach a dispensing apparatus comprising a rigid casing being moulded about a flexible tubular outlet.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the dispensing apparatus of Del Bon with the casing being moulded about the tubular outlet, in view teaching of Dubois et al., to hold the tubular outlet in non-dispensing configuration.

Allowable Subject Matter

10. Claims 1-4 are allowed.

Response to Arguments

11. Applicant's arguments with respect to claims 5-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KEVIN SHAVER can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LIEN TM NGO/
Primary Examiner, Art Unit 3754

August 25, 2009